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Page 2

AO 243 (Rev. 01/15)

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District - Southern District of New York	
Name (under which you were convicted):		Docket or Case No.:	
Oded Orbach		11:cr-11-07	
Place of Confinement:		Prisoner No.:	
FCI1 Oakdale, Louisiana		65031-054	
UNITED STATES OF AMERICA		Movant (include name under which convicted)	
V.		Oded Orbach	

MOTION

16CV7932

- (a) Name and location of court which entered the judgment of conviction you are challenging:
United States District Court
Southern District of New York
500 Pearl St.
New York, NY 10007-1312
(b) Criminal docket or case number (if you know): 11:cr-11-07
- (a) Date of the judgment of conviction (if you know): December 31, 2013
(b) Date of sentencing: _____
- Length of sentence: 25 years
- Nature of crime (all counts):
18 U.S.C. § 2339 B.F (Count 4) - Conspiracy to Provide Material
Support or Resources to Terrorists
18 U.S.C. § 2332 AA.F (Count 5) - Use of Certain Weapons of Mass
Destruction (Conspiracy to Acquire and Transfer SAMs)
- (a) What was your plea? (Check one)
(1) Not guilty ☒ (2) Guilty ☐ (3) Nolo contendere (no contest) ☐
(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or
what did you plead guilty to and what did you plead not guilty to?

N/A
- If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☒
- Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
- Did you appeal from the judgment of conviction? Yes ☒ No ☐

AO 243 (Rev. 01/15)

9. If you did appeal, answer the following:

- (a) Name of court: U.S. Court of Appeals for the Second Circuit
- (b) Docket or case number (if you know): 13-3813
- (c) Result: Affirmed
- (d) Date of result (if you know): October 8, 2015
- (e) Citation to the case (if you know): 25 U.S. App LEXIS 17732
- (f) Grounds raised:

Ineffective waiver of Jury
 Evidence was not sufficient to support jury's verdict
 District Court shifted burden of proof to defense

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☐ Unknown

If "Yes," answer the following:

(1) Docket or case number (if you know): Unknown

(2) Result: Unknown

(3) Date of result (if you know): Unknown

(4) Citation to the case (if you know): Unknown

(5) Grounds raised:

Unknown

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

AO 243 (Rev. 01/15)

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

N/A Yes ☐ No ☐

(7) Result: N/A

(8) Date of result (if you know): N/A

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket of case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised:

N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

N/A Yes ☐ No ☐

(7) Result: N/A

(8) Date of result (if you know): N/A

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: N/A Yes ☐ No ☐

(2) Second petition: N/A Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

N/A

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

AO 243 (Rev. 01/15)

GROUND ONE: Actual Innocence

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Evidence of petitioner's innocence falls outside the record. Petitioner is respectfully requesting opening of discovery pursuant to Rule 6 governing 28 U.S.C. § 2255. A list of discovery evidence not provided at trial is clearly in the possession of the United States Justice Department. (See attached letter and Motion under Rule 6 attached to this petition.)

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Actual Innocence

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

N/A Yes ☐No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

N/A Yes ☐No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

N/A Yes ☐No ☐

AO 243 (Rev. 01/15)

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

GROUND TWO: Ineffective assistance of counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Counsel failed to challenge lack of discovery as is evidenced by the attachment.

Court of Appeals sanction of Mr. Frankel for improper conduct. Appellate Court appointed attorney was ineffective in the appeal proceedings.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Actual Innocence

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

N/A Yes ☐No ☐

AO 243 (Rev. 01/15)

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/ADocket or case number (if you know): N/ADate of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

N/A Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

N/A Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

N/A Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/ADocket or case number (if you know): N/ADate of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A**GROUND THREE: Prosecutorial misconduct**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Prosecutor withheld exculpatory evidence from petitioner. (See attached letter from U.S. Department of Justice.)

Prosecutor vindictively charged and prosecuted petitioner for politically motivated biased reasons.

AO 243 (Rev. 01/15)

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Actual Innocence**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

N/A Yes ☐No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/ADocket or case number (if you know): N/ADate of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

N/A Yes ☐No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

N/A Yes ☐No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

N/A Yes ☐No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/ADocket or case number (if you know): N/ADate of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

AO 243 (Rev. 01/15)

Page 9

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

GROUND FOUR: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

N/A Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

N/A Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

AO 243 (Rev. 01/15)

(3) Did you receive a hearing on your motion, petition, or application?

N/A Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

N/A Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

N/A Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

Actual Innocence

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒
- If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

N/A

AO 243 (Rev. 01/15)

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:

(a) At the preliminary hearing:

Unknown

(b) At the arraignment and plea:

Unknown

(c) At the trial:

Unknown

(d) At sentencing:

Unknown

(e) On appeal:

Unknown

(f) In any post-conviction proceeding:

Unknown

(g) On appeal from any ruling against you in a post-conviction proceeding:

Unknown

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? N/A Yes ☐ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

This Motion is timely filed.

AO 243 (Rev. 01/15)

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

AO 243 (Rev. 01/15)

Therefore, movant asks that the Court grant the following relief:

immediate release from prison
or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on _____ 10/2/2016 _____
(month, date, year)

Executed (signed) on 9/30/2016 _____ (date)
(JFK SS)

[Signature]
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.



U. S. Department of Justice
Drug Enforcement Administration
Special Operations Division
14560 Avion Parkway
Chantilly, VA 20151

www.dea.gov

September 9, 2016

Name: Oded Orbach, #65031-054
FCI Oakdale I
Federal Correctional Institution
P.O. Box 5000
Oakdale, LA 71463

Via Express Mail – Direct Signature Required

Reference: AD-10-0018; Non-Drug Exhibit Number(s): See attached list
Property: See attached list
Seized on: February 10, 2011
Place seized: See attached list

Dear Mr.Orbach,

The attached list of described property is currently in the possession of the Drug Enforcement Administration. If not properly claimed, this property will be deemed abandoned and title to the property will vest in the United States Government. As authorized by 42 C.F.R. 128-48.102-1(b), the owner of this property, or his designee, may file a claim within thirty (30) days from the date this letter is postmarked, to regain possession of this property.

If the property is not claimed within thirty (30) days from the date this letter is postmarked, title to the property shall vest in the United States. The claim must conform to the authorities cited in 41 CFR 128-48.502. Claims must include a description of the property and the case number listed above. If your claim is granted, you will be required to complete a Secured Party Indemnity Agreement (DEA-292) at the time of release.

Send all claims to the U.S. Department of Justice, Drug Enforcement Administration-SOD-OSNA, 14560 Avion Parkway, Chantilly, VA 20151, Attention: SA Brent Wood.

Sincerely,

Thomas Cindric
Group Supervisor

List of Evidence:

N-179 Nokia telephone from Alwar POURYAN and Oded ORBACH in Romania
N-180 LG telephone from Alwar POURYAN and Oded ORBACH in Romania
N-181 Nokia telephone from Alwar POURYAN and Oded ORBACH in Romania
N-182 Iphone telephone from Alwar POURYAN and Oded ORBACH in Romania
N-183 Blackberry telephone from Alwar POURYAN and Oded ORBACH in Romania
N-184 External hard drive from Alwar POURYAN and Oded ORBACH in Romania
N-185 Canon digital camera from Alwar POURYAN and Oded ORBACH in Romania
N-186 Blackberry telephone from Alwar POURYAN and Oded ORBACH in Romania
N-187 External hard drive from Alwar POURYAN and Oded ORBACH in Romania
N-188 Ipod from Alwar POURYAN and Oded ORBACH in Romania
N-189 Digital camera from Alwar POURYAN and Oded ORBACH in Romania
N-190 3 USB drives from Alwar POURYAN and Oded ORBACH in Romania
N-194 3 USB drives from Alwar POURYAN and Oded ORBACH in Romania
N-195 Digital recorder from Alwar POURYAN and Oded ORBACH in Romania
N-197 Nokia telephone from Alwar POURYAN and Oded ORBACH in Romania
N-198 Nokia telephone from Alwar POURYAN and Oded ORBACH in Romania
N-199 CD Pringo budget from Alwar POURYAN and Oded ORBACH in Romania
N-200 misc SIM cards and black bag from Alwar POURYAN and Oded ORBACH in Romania
N-201 SIM card from Alwar POURYAN and Oded ORBACH in Romania
N-202 Oposs tower discs from Alwar POURYAN and Oded ORBACH in Romania
N-209 Three debit cards in the name of Oded ORBACH
N-210 Buisness cards and SS card for Oded ORBACH
N-212 Romanian documents from Oded ORBACH
N-213 notes and business cards from Oded ORBACH
N-214 business documents from Oded ORBACH
N-215 business documents from Oded ORBACH
N-228 one silver watch from Oded ORBACH



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

March 24, 2011

* (1) Hard drive
in each Building
(West + East)

BY FEDERAL EXPRESS

Nicole McFarland
Legal Department
Metropolitan Detention Center
80 29th Street
Brooklyn, NY 11232

Re: United States v. Maroun Saade, et al.,
11 Cr. 111 (NRB)

Dear Ms. McFarland:

Enclosed please find two hard drives containing discovery material for the following inmates to view:

Maroun Saade, 64729-054;
Walid Nasr, 64730-054;
Francis Sourou Ahissou, 64724-054;
Corneille Dato, 64701-054;
Martin Raouf Bouraima, 64731-054.

If you have any difficulty accessing these files, please contact Brian Hatfield at 212-637-2613.
Thank you.

Very truly yours,

PREET BHARARA
United States Attorney

By: Aimee Hector / Glen Kopp
Aimee Hector/Christian Everdell/Glen Kopp
Assistant United States Attorneys
(212) 637-2203/2556/2210

Enclosures

Francis Ahissou
64724-054

Locker #2
Q

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ODED ORBACH,

v.

Case No. 11:cr-11-07

UNITED STATES OF AMERICA.

**MOTION FOR DISCOVERY PURSUANT TO
RULE 6 GOVERNING TITLE 28 U.S.C. § 2255**

Comes now Oded Orbach, pro se, respectfully moving this Court for an order granting discovery to prove actual innocence.

The United States Attorney withheld exculpatory evidence that would prove Mr. Orbach's innocence. Attached to this Motion are two letters, one dated Sept. 9, 2016 and one dated March 24, 2011. The letter dated Sept. 9, 2016 has a specific list of items requested. The other letter dated March 24, 2011 has two hard drives that were given to co-defendant's but not to Mr. Orbach.

Mr. Orbach prays that this Motion is granted in the interest of justice.

Respectfully submitted this 2nd day of October, 2016.



Oded Orbach

65031-054
Federal Correctional Institution
P.O Box 5000
Oakdale, LA 71463
United States



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TO; UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
CLERK OF THE COURT.
500 PEARL STREET, NY NY. 10007

LEGAL MAIL

